THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.3519 OF 2005

DISPOSED OF ON 27-10-2005.

BETWEEN:

SOCIEDADE DE FOMENTO INDL PVT LTD.,

VILA FLORES DA SILVA,

ERASMO CARVALHO STREET, MARGAO,

GOA …. PETITIONER

AND

THE VICE CHAIRMAN AND MANAGING

DIRECTOR, A.P. MINERAL DEVELOPMENT

CORPORATION LTD., HYDERABAD

AND OTHER … RESPONDENTS

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O R D E R :

1. The petitioner challenges the action of 1st respondent-Vice Chairman and Managing Director, A.P. Mineral Development Corporation Ltd, Hyderabad in not considering its expression of interest and terms of proposed joint venture to develop Iron Ore Deposits in Ongole. The petitioner is a company and it is engaged in diverse activities of mining, beneficiation and shipping of iron and ferro manganese ores, river barge fleet operations, stevedoring, hospitality/hoteliering and trading. The 1st respondent-Corporation issued notification on 18.8.2004 inviting offers of expression of interest to exploit low grade iron ore deposits in Konijedu, mariapadu, kanduluru, yerrajerla and Sarvireddypalem villages (about 12 Kms, south-west of Ongole town), Tangturu and Ongole Mandals, Prakasham district over an extent of 1307.26 acres, which contains an estimated reserve of 52 million tones with 27.66 % average of Fe.content, and establish iron ore beneficiation/ pelletisation plant. The last date of expression of interest is required to be communicated within 15 days from the date of notification to the 1st respondent.

2. It is the case of the petitioner that it tried to send E-Mail on 27.8.2004 to the E-mail address given in the advertisement. The E-Mail addressed turned out to be incorrect and therefore efforts made by the petitioner to send expression of interest through E-Mail could not be fructified. Therefore, it sent expression of interest by a letter dated 27.8.2004 and the said letter has been dispatched to 1st respondent by Fast Track Courier service to Goa on 30.8.2004. The petitioner received a communication on 16.8.2004 stating that the expression of interest sent by it reached the office of 1st respondent after the due date and therefore the same is not being considered. Thereupon, the petitioner under letter dated 17.9.2004 informed the 1st respondent that expression of interest has been sent through Fast Track courier service on 30.8.2004. Subsequently, the petitioner came to know that the proposal sent by it is not being considered while the proposals of some other companies are being considered. Hence, this writ petition by the petitioner-company.

3. M/s. Gimpex Limited came to be brought on record as 2nd respondent as per orders in WPMP.No.9085 of 2004. Respondents 1 and 2 filed counter affidavits.

4. The sum and substance of the counter affidavit of 1st respondent is that the expression of interest sent by the petitioner-company reached this office on 3.9.2004 and thereby it came to be rejected on 7.9.2004 and the communication has been sent to the petitioner to that effect. I deem it appropriate to refer para 10 of the counter and it is thus:

> " 10. The notification was published in Hindu on 18th August, 2004 was filed by the petitioner which is placed at page 13. The said notification has faxed by Mr.Chandra Mohan, FIE to Mr.Y.S.Reddy indicating correct e-mail address of APMDC i.e. hyd2_apmdc@sancharnet.in on August 26, 2004. Thus, it is clear that the petitioner knows the correct e-mail address of APMDC on 26th August, 2004 itself. However, in the affidavit as well as in the letter dt.17th September, 2004 which is filed by the petitioner at page 38, it was mentioned that they tried to send the e-mail on 27th August, 2004 to the e-mail address given in the advertisement. Obviously, this statement is wrong as, they knew by that time the correct e-mail address of APMDC. In the notification, the fax No.040-23733152 was also given. The petitioner used to send fax messages to the Corporation. The petitioner could have sent its expression of interest by fax, which he did not do so. It clearly establish that the petitioner herein who sent his application belatedly is coming forward with the present false version."

5. 1st respondent filed additional counter affidavit on 19.9.2005. It is stated in the additional counter affidavit that font size of the stamp affixed on the receipt produced by the petitioner from M/s.Fast Track courier service differs from the font size of stamp of 1st respondent-Corporation and therefore the same has been sent to A.P. Forensic Science Laboratory, Hyderabad for its opinion on 17.5.2005. The opinion of the lab indicates that the receipt produced alleging that the expression of interest said to have been sent on 30-8-2005 was only fabricated.

6. The counter of 2nd respondent, in brief, is as follows: It is stated in the counter affidavit that the Board of Directors of 1st respondent-corporation has approved the selection of 2nd respondent and 2nd respondent has consequently entered into Memorandum of Understanding on 4.3.12005 and thus the writ petition has become

infructuous. It is further stated in the counter affidavit that 2nd respondent has taken several consequential steps pursuant to the MOU such as furnishing of Bank guarantee for performance, preparation of feasibility report and detailed project report (DPR) taking steps for incorporation of the joint venture company, hiring of personnel for the project, visiting China to make marketing arrangements for the product etc. entailing heavy expenditure for these arrangements besides investing its time and efforts.

7. The petitioner filed reply affidavit on 3.10.2005. He also filed additional affidavit on 21.10.2005 enclosing certain documents. They are

1. Letter dated 8.10.2005 addressed to the petitioner by M/s Skylark Express (Domestic and International courier) services;
2. Affidavit of P.Amonkar who is the proprietor of Fast Track Courier service;
3. Letter dated 17.10.2005 addressed to the petitioner by Fat Track Courier service.
4. Fast Track Courier service outward register w.e.f. 9.6.04 to 31.8.04.

8. Heard D.Prakash Reddy, learned Senior Counsel appearing for the petitioner, learned Advocate General appearing for the 1st respondent and learned counsel for the 2nd respondent.

9. D.Prakash Reddy, learned Senior Counsel appearing for the petitioner submits that the petitioner communicated its expression of interest through Fast Track Courier services on 30.8.2004 and the said communication reached the office of 1st respondent on 2.9.2004 i.e. within the due date and therefore non-consideration of the expression of interest by 1st respondent is arbitrary and illegal. He refers the letter dated 17-10-2005 of Fast Track Courier Service whereunder it has been stated that the consignment has been delivered to the 1st respondent on 2.9.2004. He also refers the affidavit of P.Amonkar, proprietor of Fast Track Courier service to convince the court that the expression of interest reached the office of 1st respondent on 2.9.2004.

10 Learned Advocate General appearing for the 1st respondent submits that the writ petition is liable to be dismissed inlimini on the ground of laches. He further submits that the expression of interest of the petitioner reached the office of 1st respondent on 7.9.04 i.e. beyond the last date fixed in the notification and thus 1st respondent is justified in not considering the expression of interest of the petitioner. He further submits that the petitioner created the cause of action by himself when he approached the office of 1st respondent on 19.2.2005 to find out the progress in relation to the proposed joint venture to develop Ongole Iron Ore Deposits and came to know that the proposal sent by the petitioner company is not being considered while the proposals of some other companies are being considered.

11. Learned counsel appearing for the 2nd respondent submits that the Board of Directors of 1st respondent has approved the selection of 2nd respondent and 2nd respondent has consequently entered into an MOU on 4.3.2005 and thus the writ petition has become infructuous.

12. The core issue involved in the writ petition is whether the petitioner communicated his expression of interest on or before 2.9.04. It is no more in dispute that the last date for communicating the expression of interest is 2.9.04. It is the contention of the petitioner that it sent its expression of interest by Fast Track Courier services on 30.8.2004 and the same reached 1st respondent's office on 2.9.04 and thus non –consideration of his expression of interest is arbitrary and illegal. The acknowledgement on which the petitioner relies does not bare the date of delivery. 1st respondent has taken a specific stand that the expression of interest reached its office on 7.9.04. It is for the petitioner to prove that the expression of interest sent by it reached the office of 1st respondent on or before 2.9.04. An order came to be passed on 4.10.05 directing the petitioner to place on record material to show that communication of expression of interest sent through Fast Track Courier service reached Hyderabad before 2.9.04. The relevant portion of the order passed on 4.10.05 reads as follows:

> " It is for the petitioner to satisfy that it tried to send expression of interest through E-Mail address and the same came to be rejected for incorrect E-Mail address. Further it has also to place on record some proof that expression of interest sent by Fast Track Courier service reached hyderabad before 2nd September, 2004 and the same has been delivered in the office of the first respondent on 2.9.05.
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> In these circumstances, I deem it appropriate to direct the petitioner to place on some documents prima facie to show that the petitioner tried to send expression of interest through E-Mail and the expression of interest sent by it through Fast Track Courier service reached the office of the 1st respondent on 2.9.04."

13. According to the petitioner, the consignment containing the expression of interest has been sent through Fast Track Courier Service and the same has been served on 1st respondent through the agency of Fast Track Courier Service. M/s Skylark Express (Domestic and International courier) Services is the agency of Fast Track Courier Service at Hyderabad. If the consignment containing the expression of interest reached Hyderabad before 2.9.04, M/s Skylark Express (Domestic and International courier) services which is the agency of Fast Track Courier Service must be maintaining the register indicating the date of receipt of consignment and entrustment of the consignment for effecting delivery to the consignee. No documentary proof has been placed on record to show that the expression of interest sent by the petitioner through Fast Track Courier Service reached M/s Skylark Express (Domestic and International courier) Services, Hyderabad before 2.9.2004. In the absence of such evidence the contention of the petitioner that the expression of interest sent by it through Fast Track Courier Service reached the 1st respondent cannot be accepted. The petitioner also lacks bonafides since it did not take any action inspite of being informed of the expression of interest did not reach within the date and kept silent from 16.9.2004 to 22.2.2005. Therefore, I find the writ petition devoid of merits and the same is liable to be dismissed.

14. Accordingly, this Writ Petition is dismissed. No costs.

Dt: 27-10-2005. (B.Seshasayana Reddy,J)

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